

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA)	
)	
V.)	CRIMINAL NO. 05-30046MAP
)	
EDUARDO PAGAN)	

**DEFENDANT'S MOTION FOR PRE-TRIAL HEARING ON GOVERNMENT'S
FILING PURSUANT TO 21 U.S.C. SECTION 851 TO ENHANCE DEFENDANT'S
POTENTIAL SENTENCE (WITH ASSENT)**

Now comes the defendant in the above-titled matter and respectfully request that this Honorable Court conduct a pre-trial hearing to determine whether defendant's prior conviction can serve as the basis for an enhanced punishment in the above-titled case.

In support of this motion the parties state:

1. Defendant was convicted of a prior drug distribution offense in the State of Connecticut in 1999, and defendant contests the validity of his guilty plea in connection with said conviction. In support of this assertion defense counsel states that he has reviewed the four-page transcript of defendant's Connecticut plea and suggests that the colloquy fails to address:
 - (a) whether the defendant's plea was given freely and voluntarily;
 - (b) whether the defendant's plea was given intelligently; and
 - (c) whether defendant was advised of his right to be found guilty beyond a reasonable doubt;

2. On the basis of said conviction the government has filed for a sentencing enhancement pursuant to 21 U.S.C. 851, which exposes the defendant, if convicted in the present case, to a mandatory minimum sentence of 10 years;
3. Based upon the court's findings on the 851 proceeding, the parties will be able to determine whether the underlying case will go to trial or be resolved by a plea;
4. A pre-trial hearing on 851 will foster judicial economy;
5. The district court has discretion to permit a defendant charged with a drug distribution charge to challenge the prerequisite conviction to a sentence enhancement prior to a trial or plea (See United States v. Jose Santos, 367 F. Supp. 2d 180 (2005); and
6. The government assents to having a pre-trial hearing on the 851 issue in this matter.

Wherefore, the parties request that the court permit this motion for a pre-trial hearing on the 851 enhancement, and that said hearing be scheduled after memoranda has been filed in support of the respective positions.

With Assent

Respectfully submitted,

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